

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, California 94105

INITIAL STATEMENT OF REASONS

File No. RH 04038570

Notice Date: July 29, 2004

Proposed Additions to the Insurance Commissioner's Regulations pertaining to claims adjuster training certification for workers' compensation insurance claims adjusters.

In a public hearing in the Insurance Commissioner's offices in San Francisco on September 29, 2004, the Insurance Commissioner will consider regulations setting forth the minimum standards of training, experience, and skill that workers' compensation claims adjusters must possess in order to perform their duties

The regulations described in this Statement of Reasons have been drafted in accordance with the statutory requirement in Insurance Code Section 11761, which became effective on January 1, 2004. The regulations are intended to implement and make specific the requirements of this section of the Insurance Code.

Insurance Code Section 11761 requires the Insurance Commissioner to adopt regulations setting forth the minimum standards of training, experience, and skill that workers' compensation claims adjusters must possess to perform their duties. There are no other statutes in California law that authorize the Insurance Commissioner to set such standards. There are no federal regulations concerning California workers' compensation claims adjusters or any other aspect of California workers' compensation. The purpose of the regulation is to allow the commissioner to set the minimum standards of training, experience, and skill for workers' compensation claims adjusters and to require insurers, as defined in Insurance Code Section 11761, to certify that claims adjusters in their employ, including personnel employed for that purpose by any medical billing entity with which an insurer contracts, meet the minimum standards determined by the Insurance Commissioner. Insurers, as defined in the law, include workers' compensation insurance companies, the State Compensation Insurance Fund, private and public employers who are self-insured pursuant to a certificate of self-insurance issued by the Department of Industrial Relations, or third party administrators who possess a certificate of consent from the Department of Industrial Relations.

The purpose of the regulations is to set minimum standards of competence for workers' compensation claims adjusters in order to ensure that workers' compensation claims are handled with efficiency, equity, and in accordance with all applicable laws and regulations.

The proposed regulations contain definitions of important terms. The term “claims adjuster” was carefully crafted to include the activities currently performed by personnel employed in adjusting claims. The terms “experienced claims adjuster” and “experienced medical-only claims adjuster” were defined so that those personnel who are currently experienced in their respective areas may be treated somewhat differently from adjusters who are inexperienced. “Curriculum” and “Training” were defined broadly to include specified topics, but not to restrict insurers to a specified curriculum. The term “insurer” is defined in the statute that mandates the regulations and the regulations restate the statutory definition.

The proposed regulations require different specified number of hours of training for three categories of claims adjusters as well as different specified hours of training for experienced claims adjusters. Those whose duties involve the most complexity are required to receive more hours of training than those whose work involves less complex matters. Those who handle all aspects of a workers’ compensation claim are required to receive, at a minimum, 160 hours of training, of which no less than 120 hours are in a classroom. Claims adjusters who handle only the medical-only part of claims are required to receive at least 120 hours of training, of which no less than 80 hours are in a classroom, while medical bill reviewers must receive at least 40 hours of training, at least 30 hours of which are in a classroom. Experienced claims adjusters and experienced medical-only claims adjusters must receive at least 30 hours of post-certification training every two years.

An insurer, as defined, may provide training directly or may contract with another entity to provide the training. However, a workers’ compensation insurance company and a self-insured employer shall certify that the training provided, both to its own staff and to the staff of a third party administrator that handles its claims has received the appropriate training. The proposed regulations specify that an insurer may not employ an individual as a claims adjuster who has not been trained or is not experienced.

The proposed regulations do not specify a curriculum for claims adjuster training because they are designed to encourage, to the greatest extent possible, the use of existing private and public training programs. Instead of specifying a curriculum, they list a number of relevant topics, all of which must be included in whatever curriculum is used by an insurer. The listed topics are not exhaustive of all workers’ compensation issues; instead they are the basic subjects that claims adjusters must understand in order to perform their functions appropriately.

The proposed regulations contain a separate section that applies to medical bill reviewers because the work of adjusters who work in these entities is different in many ways from the work of those who work for other insurers, as defined. The specified hours and subject areas that are required are less than for other adjusters, because the work of adjusters who are employed to review medical bills is much less complex than that of other claims adjusters.

Upon completion of training, an insurer shall provide to a claims adjuster a certificate of completion in the form and manner determined by the commissioner. An insurer shall also provide a certificate to claims adjusters who are exempt from the training requirement that indicates that they are experienced claims adjusters. An insurer shall provide a copy of the claims adjuster's Certificate of Completion or Experienced Claims Adjuster Certificate to a requesting policyholder or injured worker whose claim is being adjusted by the claims adjuster. An adjuster who has been certified by an insurer as having completed the training shall not be required to be re-trained and re-certified in order to adjust claims for a different insurer.

Insurers shall maintain a record of an adjuster for whom training has been provided or sponsored for at least eight (8) years after the adjuster has completed the training. If a claims adjuster goes to work at an insurer other than the insurer who trained the claims adjuster, the training insurer shall send the records of the claims adjusters' training to the employing insurer within 20 days after a request for the records has been sent. The proposed regulations specify exactly what type of information must be retained and state that these records shall be made available upon request to the Insurance Commissioner and to the Administrative Director of the Division of Workers' Compensation. In addition, the proposed regulations require insurers to submit to the Insurance Commissioner specified documents and states that sufficient information to allow policyholders to choose an insurer with an adequately trained staff shall be posted on the Department of Insurance website.